BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	**WT Docket No. 11-18**
Applications of	)	**DA 11-252**
AT&T Mobility Spectrum LLC and	)	
QUALCOMM Incorporated		)
	)	
for Consent to the Assignment of	)	**File No. 0004566825**
Licenses and Authorizations	)	

JOINT OPPOSITION OF AT&T MOBILITY SPECTRUM LLC AND QUALCOMM INCORPORATED TO PETITIONS TO DENY OR TO CONDITION CONSENT AND REPLY TO COMMENTS

William R. Drexel
John J. O'Connor
James Meza III
AT&T Inc.
208 South Akard Street
Room 3504
Dallas, TX 75202
Telephone: (214) 757-3350

Gary L. Phillips
Michael P. Goggin
AT&T Inc.
1120 Twentieth Street, NW
Suite 1000
Washington, D.C. 20036
Telephone: (202) 457-3055

Dean R. Brenner
QUALCOMM Incorporated
1730 Pennsylvania Avenue, NW
Suite 850
Washington, D.C. 20006
Telephone: (202) 263-0020

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Of Counsel:

Arnold & Porter LLP
555 Twelfth Street, NW
Washington, D.C. 20004
Telephone: (202) 942-6060

Wiltshire & Grannis LLP
1200 Eighteenth St., NW
Suite 1200
Washington, D.C. 20036
Telephone: (202) 730-1352

SUMMARY

The Petitioners in this proceeding utterly fail to refute the public interest benefits that will result from AT&T's repurposing of underutilized Lower 700 MHz D and E block spectrum, or to demonstrate any competitive harm that will occur as a result. Their claims that the Commission should deny this transaction, or else impose burdensome conditions on the grant of approval, make no sense in light of these public benefits and the vigorous competition in the provision of mobile services.

Above all, this transaction will help ease the looming spectrum crisis that the Commission is rightly so concerned about, and for that reason alone, the Commission should promptly reject Petitioners' arguments and approve the transaction without imposing any of the proposed conditions. AT&T plans to promptly bond the Qualcomm Spectrum with paired spectrum in its LTE network as soon as the standards and equipment utilizing innovative supplemental downlink technology are available, which AT&T expects to occur by 2014. The spectrum will help AT&T meet the continuing explosion in consumer demand for cutting-edge mobile broadband devices and services. As Chairman Genachowski noted just last week, "[m]ultiple expert sources expect that by 2014, demand[s] for mobile broadband and the spectrum to fuel it, will be 35 times the levels [they were] in 2009." This transaction is critical to helping AT&T meet that burgeoning demand.

After the grant of this transaction, the U.S. wireless market will continue to lead the world in the deployment of next generation broadband wireless networks and devices and consumers will enjoy the same, broad choice of providers. Competition will not diminish nationally or in any Cellular Market Area as a result of this transaction. Rather, this transaction will stimulate competition, foster innovation, and advance the country's position globally by

providing AT&T additional spectrum capacity to compete with other carriers rolling out LTE mobile broadband services, the same services that the Commission and the Administration are trying to ensure are made available in the United States as broadly and as rapidly as possible.

There simply is no basis for the Petitioners' request that the Commission abandon its competitive screens to measure this vigorous competition in favor of an amorphous competitive harm standard or a standard that myopically scrutinizes the low-frequency spectrum holdings of a carrier separate from all other spectrum suitable for wireless services. The Commission's current conservative screens already satisfy Petitioners' request that the Commission carefully consider the potential for competitive harm arising from this transaction, and they provide carriers a level of predictability in making spectrum purchases and planning future deployments of advanced networks. Petitioners' alternative proposals would weaken the secondary market for spectrum that, under the National Broadband Plan, should remain free from regulatory hurdles that undermine the efficient use of spectrum. Further, a policy that singles out a carrier's spectrum holdings below 1 GHz for isolated scrutiny will likely distort competition, result in an inefficient use of spectrum, and harm consumers. While the superior propagation characteristics of low-band spectrum might reduce the costs of a network build-out at least initially, Petitioners have failed to show that the overall investment required to buy and deploy high-band spectrum is greater than for low-band spectrum, much less that such cost difference is competitively significant. In fact, it would be contrary to the National Broadband Plan for the Commission to distinguish among spectrum bands for mobile broadband. The Plan targets spectrum for mobile broadband at 3.7 GHz and below, without distinguishing among bands.

Petitioners' remaining claims are equally without merit. Free Press's request that the Commission repurpose the Qualcomm Spectrum for unlicensed third party use is barred by

Section 310(d) of the Communications Act. Also, the availability of additional spectrum for unlicensed use is being addressed in other proceedings. DISH's request that the Commission require AT&T to divest the Lower 700 MHz E block spectrum makes no sense, since AT&T's post-transaction spectrum holdings will not exceed the Commission's spectrum screen in any of the counties where Qualcomm holds such spectrum. In any event, Section 310(d) prohibits the Commission from considering DISH's or any other carrier's desire for the spectrum. Rural Cellular Association's claim that AT&T is planning to warehouse the Qualcomm Spectrum is belied by AT&T's plans to promptly use the spectrum as soon as standards and equipment are in place to permit its use with innovative supplemental downlink technology. Various petitioners also complain about alleged harms that are not transaction-specific, and, thus, their proposed remedies should not be considered by the Commission in this proceeding. Finally, King Street Wireless's request that the Commission turn AT&T's current general plans for use of the Qualcomm Spectrum into a binding condition of the grant of this transaction is not necessary because this transaction raises no threat of competitive harm which such a condition would mitigate.

In light of the public interest benefits and the absence of any credible evidence of competitive harm, the Commission should approve this transaction quickly and without conditions.

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Exhibit:

Declaration of Jeffrey H. Reed and Nishith D. Tripathi

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I. Introduction

The petitioners and commenters (collectively, the "Petitioners") have failed to refute the Public Interest Statement's demonstration that AT&T's acquisition of Qualcomm's Lower 700 MHz D and E block licenses (the "Qualcomm Spectrum") will serve the public interest by repurposing underutilized spectrum to address the ever-increasing consumer demand for mobile broadband services and will enhance competition. Instead, Petitioners raise a series of claims that are not specific to this transaction, not appropriately considered by the Commission, and, in all events, meritless.[1] The Commission should deny the requests in these pleadings and grant the Application promptly and without conditions.

[1] There is no basis for the Commission to designate the applications for a hearing, as Rural Telecommunications Group, Inc. ("RTG"), Free Press, Public Knowledge, Media Access Project, Consumers Union, and The Open Technology Initiative of the New American Foundation ("Free Press"), and Cellular South, Inc. ("Cellular South") request if the Commission

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II. The Transaction Will Produce Public Interest Benefits.

The Petitioners do not meaningfully call into question the significant public interest benefits demonstrated in the Public Interest Statement.[2] AT&T plans to bond the Qualcomm Spectrum with paired spectrum in its national LTE network using innovative supplemental downlink technology as soon as the standards and equipment utilizing that technology are available, which AT&T currently anticipates to occur as early as 2014.[3] This new technology will help AT&T meet the increasing consumer appetite for cutting-edge mobile broadband and data services which is not expected to abate anytime soon. As Chairman Genachowski noted just last week, "[t]he hunger for mobility is even greater than many imagined a year ago," and "[m]ultiple expert sources expect that by 2014, demand[s] for mobile broadband and the spectrum to fuel it, will be 35 times the levels [they were] in 2009 [and] Cisco has projected a nearly 60X increase between 2009 and 2015."[4] This transaction will help position AT&T to meet that demand and ensure it provides the quality of services consumers expect.[5]

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does not grant their requests. *See* Petition to Deny of Rural Telecommunications Group at 13-14 (filed Mar. 11, 2011) ("RTG Petition"); Petition to Deny of Free Press, Public Knowledge, Media Access Project, Consumers Union, and The Open Technology Initiative of the New American Foundation at 16 (filed Mar. 11, 2011) ("Free Press Petition"); Petition to Deny of Cellular South, Inc. at 3 (filed Mar. 11, 2011) ("Cellular South Petition"). The public policy concerns that these parties raise do not pose substantial and material questions of fact which would require an evidentiary hearing into the public interest benefits of the transaction. *See* 47 U.S.C. § 309(e) (stating that a substantial and material question must be raised before the FCC is required to hold a hearing in lieu of a grant).

[2] *See* Description of the Transaction, Public Interest Showing and Related Demonstrations at 4-18 (filed Jan. 13, 2011) ("Public Interest Statement").

[3] *Id.* at 14-16.

[4] Julius Genachowski, Chairman, FCC, "The Clock is Ticking" Remarks on Broadband at the Mobile Future Forum at 4, 8 (Mar. 16, 2011), *available at*

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As a result, once the Qualcomm Spectrum is put to use, tens of millions of consumers will enjoy faster and better mobile broadband service over AT&T's LTE network than would have been possible absent this transaction.[6] Increased downlink capacity will enable much higher broadband speeds, thus permitting faster downloads of videos, files, and other applications, and a more seamless experience for bandwidth-intensive, real-time applications such as games and videos.[7] In short, AT&T's acquisition of the Qualcomm Spectrum will enable a better and higher use of this spectrum to bring significant, tangible benefits to customers. These benefits are real and substantial, and they meet, indeed exceed, the public interest standard.[8] In fact, even petitioners who oppose the transaction recognize these public

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http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0316/DOC-305225A1.pdf ("March 16, 2011 Chairman Genachowski Speech").

[5] Failure to meet that demand will have dire consequences. As one recent study has noted, the "effects of insufficient spectrum are multiple and all negative," and "lead[] to a variety of significant adverse effects in terms of the functionality of the mobile Internet for consumers, including: sluggish behavior (e.g., slow-loading Web pages); stalls (e.g., failures of streaming video like remote health monitoring); complete failure (application or computer system has to be restarted); communications protocols behave erratically (e.g., undelivered packets of data); unpredictable application behavior (e.g., works some times and not others)." Rysavy Research, The Spectrum Imperative: Mobile Broadband Spectrum and its Impacts for U.S. Consumers and the Economy An Engineering Analysis 17 (2011), *available at* http://www.mobilefuture.org/page/-/rysavy-spectrum-effects-301611.pdf.

[6] Public Interest Statement at 17-18.

[7] *Id.* at 14-18.

[8] *See, e.g.*, *In re Applications of Cellco P'ship d/b/a Verizon Wireless & Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, & Spectrum Manager & De Facto Transfer Leasing Arrangements,* Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd. 17,444, 17,497-99, 17,502-04, 17,507-09, 17,515, ¶¶ 119, 122-23, 128-32, 136, 140-42, 156 ("*Verizon/ALLTEL Order*"); *In re Applications of Cellco P'ship d/b/a Verizon Wireless & Rural Cellular Corp. for Consent to Transfer Control of Licenses, Authorizations, & Spectrum Manager Leases & Petitions for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Commc'ns Act,* Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd. 12,463, 12,504-12, ¶¶ 91-109 (2008) ("*Verizon/RCC Order*"); *In re*

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benefits. For example, DISH, while opposing the transaction, noted that it "generally agrees with the Applicants that customers benefit from 'more robust wireless broadband service[s]' that meet the 'demand for innovative, spectrum-intensive wireless data and content services,'"[9] and RTG and its members "concede that any increase in a particular company's spectrum portfolio will improve its operational efficiencies, which in turn benefits a company's current customer base."[10]

This transaction also will further the Administration's goal of "win[ning] the future by catalyzing the buildout of high-speed wireless services,"[11] and the National Broadband Plan's objective of putting spectrum to a more valuable and efficient use in order to meet the "growing demand for wireless broadband services and ensure that America keeps pace with the global

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Applications of AT&T Inc. & Dobson Commc'ns Corp. for Consent to Transfer Control of Licenses & Authorizations, Memorandum Opinion and Order, 22 FCC Rcd. 20,295, 20,332-33, 20,335, ¶¶ 78-79, 84 (2007) ("*AT&T/Dobson Order*"); *In re Applications of Midwest Wireless Holdings, L.L.C. & ALLTEL Commc'ns, Inc. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd. 11,526, 11,564, 11,566, 11,568, ¶¶ 105, 110, 116-18 (2006); *In re Applications of Nextel Commc'ns, Inc. & Sprint Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13,967, 14,015-16, ¶¶ 132-36 (2005) ("*Sprint/Nextel Order*"); *In re Applications of W. Wireless Corp. & ALLTEL Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13,053, 13,102-06, 13,111-12, ¶¶ 138-43, 158 (2005) ("*ALLTEL/Western Wireless Order*"); *In re Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21,522, 21,599-609, 21,611, ¶¶ 202-203, 207-229, 236 (2004) ("*Cingular/AT&T Wireless Order*"), *recons. denied*, Order on Reconsideration, 20 FCC Rcd. 8660 (2005) ("*Cingular/AT&T Wireless Reconsideration Order*").

[9] Petition to Deny of DISH Network, L.L.C. at 4 (filed Mar. 11, 2011) ("DISH Petition").

[10] RTG Petition at 5.

[11] Press Release, The White House, President Obama Details Plan to Win the Future through Expanded Wireless Access (Feb. 10, 2011), *available at* http://www.whitehouse.gov/the-press-office/2011/02/10/president-obama-details-plan-win-future-through-expanded-wireless-access.

wireless revolution."[12] These unquestionably are substantial public benefits that customers should not be denied.

III. The Transaction Will Not Harm Competition.

Applicants demonstrated in the Public Interest Statement that this transaction poses no threat to competition. As any consumer can tell, the wireless industry is highly competitive, and this transaction will not diminish that vigorous competition either nationally or in any Cellular Market Area ("CMA") or Basic Economic Area ("BEA").

A. The Transaction Will Not Affect the Robust Competition at the National Level.

Petitioners purport to dispute that the wireless industry is fiercely competitive, but these claims ring hollow. U.S. wireless consumers enjoy choice at every level of the wireless ecosystem—from wireless providers, to service plans, to handsets and other devices, to operating systems, to applications.[13] Moreover, the U.S. wireless industry is leading the world in the

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[12] *See* FCC, Connecting America: The National Broadband Plan 76-77, 84 (2010) (recognizing that "[t]he use of wireless broadband is growing rapidly" and straining networks) ("National Broadband Plan").

[13] *See, e.g.*, *In re Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report & Analysis of Competitive Mkt. Conditions With Respect to Mobile Wireless, Including Commercial Mobile Servs.*, WT Dkt No. 09-66, Fourteenth Report, FCC 10-81, ¶ 42, Table 5, ¶ 45, Table 7 (rel. May 20, 2010) ("*Fourteenth Competition Report*") (showing that consumers everywhere have multiple choices for mobile voice and broadband services); *In re The State of Mobile Wireless Competition*, WT Dkt No. 10-133, Comments of CTIA-The Wireless Association at 25-28, 39-40 (filed July 30, 2010) (stating that "[c]ompetition has motivated carriers to develop a variety of calling plans to satisfy diverse consumer needs, including pre-paid and post-paid, buckets of minutes and text messages, friends and family plans, free long distance plans, national and local plans and unlimited calling and data service options….[T]hrough these plans, the wireless industry accommodates consumers' needs across all income and usage levels," and noting that "[t]he market for mobile operating systems continues to grow increasingly competitive [and] the numerous operating systems available today offer unique user interfaces, feature specifications, and customer experiences.") ("*In re The State of Mobile Wireless Competition* CTIA Comments"); National Broadband Plan at 16-18

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development of next-generation broadband wireless networks, in smartphones and other devices that take advantage of these networks, and in other types of innovation,[14] all of which has propelled massive investment and growth at a time when other industries are stagnant or struggling to remain afloat.[15] The Commission itself has noted that competition in wireless services has led to significant benefits in the form of lower prices and exploding usage.[16] Competition is intensifying as relatively recent entrants, such as MetroPCS and Leap Wireless, have become fierce competitors in many areas—indeed, MetroPCS was the first U.S. carrier to

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(stating that "[d]evices continue to grow in number and variety as more computers, phones and other machines connect to the Internet.").

[14] *See* Public Interest Statement at 30; *see also In re The State of Mobile Wireless Competition* CTIA Comments at i, iii (stating that "the American public…enjoy[s] some of the most extensive, least expensive, and most advanced mobile services in the world," that "[n]ot only does the U.S. lead in wireless investment, it also leads the world in mobile broadband deployment and adoption," and that "by any measure, the U.S. is the world leader in wireless communications.").

[15] Public Interest Statement at 30-38. *See also* Sprint Nextel Corp., Annual Report (Form 10-K), at F-33 (Feb. 24, 2011) (Sprint Nextel has invested approximately $5 billion over the last three years to enhance its wireless network) ("Sprint Nextel 10-K"); MetroPCS Communications, Inc., Annual Report (Form 10-K), at 81 (Mar. 1, 2011) (MetroPCS has expended approximately $2.6 billion over the last three years to expand and improve its network) ("MetroPCS 10-K"); Clearwire Corp., Annual Report (Form 10-K), at 73 (Feb. 22, 2011) (Clearwire has expended approximately $4.6 billion over the past three years to build out its network).

[16] *Fourteenth Competition Report* ¶ 1. The national penetration rate is now up to approximately 93 percent. Text messaging and data usage have greatly increased. *Fourteenth Competition Report* ¶¶ 178-184, Charts 23-26, Table 17; Robert F. Roche & Liz Dale, CTIA's Wireless Industry Indices Semi-Annual Data Survey Results: A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry 2 (2010) ("CTIA Report"). For example, SMS and text traffic increased 33 percent from year ending June 2009 to year ending June 2010, and wireless data revenue increased 27 percent from six months ending June 2009 to six months ending June 2010. CTIA Report at 2, 10. The average local monthly bill (including voice minutes and data services, but excluding toll and roaming fees) fell from $49.57 per month to $47.47 per month from June 2009 to June 2010. CTIA Report at 1. Meanwhile, prices per unit of use (*e.g.*, per MOU or per text message) have generally declined or stayed flat. *Fourteenth Competition Report* ¶¶ 185-193.

deploy LTE service.[17] At the same time, companies like Clearwire and LightSquared are bringing new mobile broadband capacity to market and offering wholesale capacity to carriers and MVNOs who wish to make use of it.[18]

Petitioners do not credibly dispute any of these facts. Indeed, their concerns appear to be driven by their desire to avoid more vigorous competition from AT&T.[19] Cellular South, for its part, candidly admits as much, noting that it will "suffer the economic consequences of competing with AT&T's 'more robust wireless broadband service' offering" if this transaction is

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[17] MetroPCS 10-K at 6, 35; *see also* Public Interest Statement at 34.

[18] *Fourteenth Competition Report* ¶¶ 69-71 (discussing Clearwire's recent entry into the mobile wireless industry); Press Release, LightSquared, Introducing LightSquared: Revolutionizing the U.S. Wireless Industry (July 20, 2010) ("As the nation's first wholesale-only integrated wireless broadband and satellite network, LightSquared will provide wireless broadband capacity to a diverse group of customers, including retailers; wireline and wireless communication service providers; cable operators; device manufacturers; web players; content providers; and many others."), *available at* http://www.lightsquared.com/press-room/press-releases/introducing-lightsquared-revolutionizing-the-u-s-wireless-industry-2/; Press Release, Clearwire, Clearwire Reports Record Fourth Quarter and Full Year 2010 Growth (Feb. 17, 2011) (announcing 1.42 million wholesale additions and Clearwire's intent to "improv[e] the operating performance of [its] business by aggressively growing [its] wholesale business" in 2011), *available at* http://corporate.clearwire.com/releasedetail.cfm?ReleaseID=550982.

[19] Petitioners concerns also appear driven by a desire to see the Commission quickly allocate more spectrum for mobile services in accordance with the National Broadband Plan. *See, e.g.,* RTG Petition at 5-7. AT&T and Qualcomm fully support that objective. However, the fact that the FCC has recognized that making additional mobile broadband spectrum available for auction would be in the public interest does not mean that this secondary market transaction, that would repurpose spectrum that is not being used for two-way mobile services today, would not be in the public interest. RTG's suggestion that this transaction is not consistent with the National Broadband Plan is just incorrect. The very Plan language that RTG cites makes clear that both the allocation of new spectrum *and* refarming of existing spectrum promote the Plan's goals. *See* RTG Petition at 5-6 (noting that the National Broadband Plan states that "'[u]nlocking the full potential of 4G will require *more than* a 're-farming' of existing mobile spectrum,'" and that "[a]dditional spectrum is *also* required to accommodate multiple providers in a competitive marketplace") (quoting National Broadband Plan at 78) (emphasis added).

approved.[20] However, as is often noted, the Commission's "statutory duty is to protect efficient competition, not competitors."[21] Self-serving attempts to avoid competition should be seen for what they are and rejected.

B. The Transaction Will Not Diminish Competition in Any Area.

Examining this transaction on a granular level confirms what is evident from the broader perspective—that it is affirmatively pro-competitive. As the Public Interest Statement explained, there is no place where the acquisition of the Qualcomm Spectrum will cause AT&T to exceed the Commission's current spectrum screen.[22] Even if the screen were adjusted by 9 MHz to account for WCS as suggested by RCA,[23] AT&T's attributable spectrum would still be below any initial screen with minimal exceptions.

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[20] Cellular South Petition at 5.

[21] *In re AT&T Inc. & BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, 5759, ¶ 195 (2007) ("*AT&T/BellSouth Order*"), *recons. denied*, Memorandum Opinion and Order, 23 FCC Rcd. 15,040 (2008); *In re SBC Commc'ns Inc. & AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18,290, 18,371, ¶ 151 (2005) ("*SBC/AT&T Order*").

[22] The screen is designed to identify those local markets where more in-depth analysis may be warranted. *See, e.g., In re Applications of AT&T Inc. & Centennial Commc'ns Corp. for Consent to Transfer Control of Licenses, Authorizations, & Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd. 13,915, 13,931-32, ¶ 34 ("*AT&T/Centennial Order*"). Local markets that do not exceed the screen require no further analysis to determine if the transaction will result in competitive harm. *Id.* at 13,936,¶ 46. For those markets not eliminated by the initial screen, the Commission conducts an analysis of any potential competitive harms. *Id.* However, further scrutiny of a local market does not necessarily indicate that the Commission will conclude the acquisition has the potential to harm competition in that market. *See, e.g., AT&T/Dobson Order* at 20,323, ¶ 53 (finding that, of the 32 CMAs identified as requiring further competitive review by the initial screen, the acquisition would result in a significant likelihood of competitive harm in only four).

[23] RCA Petition at 10-11. If the Commission includes WCS spectrum in the screen, AT&T believes that it also should include all spectrum available for mobile services, including all 194 MHz of BRS/EBS spectrum and 90 MHz of MSS/ATC spectrum. Public Interest Statement at 21.

Similarly, AT&T will not exceed the Commission's current screen—or a screen that includes WCS—in areas where Qualcomm holds Lower 700 MHz E block licenses. DISH's suggestion to the contrary is simply wrong.[24] Based on the Commission's current screen, post-transaction, AT&T falls below the screen in every county in which it will be acquiring Lower E block spectrum—indeed in most counties, the post-transaction AT&T falls far below the screen. More specifically, the post-transaction AT&T falls below the current screen by an average of 46 MHz in the 114 counties in which it will be acquiring Lower E block spectrum.[25] If the FCC were to include WCS spectrum in the screen, the results would be even more dramatic—AT&T would be under the screen in every county by an average of almost 51 MHz.[26]

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[24] DISH Petition at 9. DISH's misstatements are based on a combination of faulty and selective use of spectrum holding numbers. As an initial matter, DISH's claim that "AT&T's CMRS holdings already constitute close to, or more than, one-third of the available spectrum in the cellular, PCS, 700 MHz, AWS and WCS bands (total of 350 MHz)" is based on a miscalculation of the total spectrum available. The correct total of spectrum in these bands is 375 MHz—including the 50 MHz of cellular, 130 MHz of PCS, 80 MHz of 700 MHz, and 90 MHz of AWS that is currently included in the Commission's screen, and 25 MHz of WCS that is available for mobile use. Also, the selection of services included in DISH's chart is completely random—the only criterion apparently being that these are services in which AT&T holds spectrum, which magnifies the seeming significance of AT&T's holdings. DISH leaves off 19 MHz of SMR and 55.5 MHz of BRS, which the Commission counts toward the spectrum screen. Also, if DISH adds 25 MHz of WCS, which the FCC has never counted toward the spectrum screen, then an additional 138.5 MHz of BRS/EBS spectrum plus 90 MHz of MSS/ATC spectrum also should be counted. *See* Public Interest Statement at 21-28. DISH's statements about AT&T's spectrum holdings are also flat out wrong in a number of instances. For example, AT&T holds 25 MHz of cellular spectrum in New York and not 38 MHz as DISH claims, and 30 to 40 MHz of PCS spectrum in Boston and not the 60 MHz that DISH claims.

[25] Public Interest Statement, Appendix A.

[26] *Id.*

C. The Commission Should Not Abandon Its Screen in Favor of an Amorphous Competitive Harm Standard.

The Commission should reject suggestions that it effectively abandon its competitive screens and replace them with an amorphous competition test or *no test at all*.[27] The Commission's screens are an intentionally "conservative" tool that ensures that the Commission does not "exclude from further scrutiny any geographic areas in which the potential for anticompetitive effects exists."[28] If the Commission's screens are exceeded in any areas, a case-by-case analysis of competitive harm in those areas is undertaken. In other words, the current screens satisfy Petitioners' request that the Commission carefully consider the potential for "actual" competitive harm in any case where there is even a possibility that such harm could occur.

Proposals to replace the Commission's screens with vague *ad hoc* competition tests also would undermine the secondary market policies articulated in the National Broadband Plan. In that Plan, the Commission stated "[t]he goal of the FCC's current secondary market policies is to eliminate regulatory barriers that might hinder access to, and permit more efficient use of, valuable spectrum resources."[29] To that end, Recommendation 5.7 of the Plan provides: "The FCC should evaluate the effectiveness of its secondary markets policies and rules to promote

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[27] RCA, for example, suggests that "the Commission must move beyond screening tools and evaluate the actual competitive harms implicated by this transaction," but it offers no guidance on how such alleged harms should be measured. RCA at 12. Free Press and RTG suggest that the Commission should consider a broader test of competitive harm that takes into account, for example, a carrier's spectrum holdings in the lower frequency bands, but neither offers guidance on how such holdings should be taken into account. Free Press at 9-12; RTG at 7-13.

[28] *AT&T/Centennial Order*, 24 FCC Rcd. at 13,936, ¶ 46.

[29] National Broadband Plan, Recommendation 5.7 at 83.

access to unused and underutilized spectrum."[30] Replacing the Commission's spectrum screens with a vague, subjective test—or no test at all—would not promote access to unused and underutilized spectrum. To the contrary, adopting Petitioners' proposal would introduce uncertainty and confusion on a matter that the Plan appropriately sought to clarify. Carriers need some level of predictability in making spectrum purchases and planning future deployment of advanced networks. The lack of predictability that Petitioners would introduce would obstruct secondary market transactions that ensure the efficient use of spectrum and that this Commission has committed to promote.

IV. The FCC Should Reject Petitioners' Request for a Competitive Harm Test That Distinguishes Among Spectrum Bands.

AT&T believes that the Commission also should reject calls to separately analyze spectrum in lower frequency bands.[31] The Commission repeatedly has refused to arbitrarily "differentiate[ ] among bands based on specific propagation characteristics or purported

[30] *Id.* Of course, this transaction, which would allow underutilized, unpaired spectrum to be repurposed for mobile broadband use through an innovative supplemental downlink technology, is precisely the sort of secondary market activity the FCC is striving to promote in Recommendation 5.7.

[31] *See* RTG Petition at 8-12 (stating that the "economic and technical benefits of operating within the lower frequency bands are common knowledge in the industry"); Free Press at 9-12 (stating that "the Commission must not approve the present application without specifically and distinctly examining holdings in the 700 MHz band and holdings below the 1 GHz threshold"). *See also* RCA Petition at 5-6 (stating that "lower-frequency spectrum is more effective [in rural areas] and could enable multiple smaller competitors to compete with AT&T"). While petitioners are not always clear, it appears that most consider lower frequency spectrum to include spectrum below 1 GHz and higher frequency spectrum to include spectrum above 1 GHz that is suitable for the provision of mobile services. AT&T will refer to lower frequency spectrum as "low-band" spectrum and higher frequency spectrum used for mobile services as "high-band" spectrum.

distinctions in trading value."[32] Moreover, it would be contrary to the National Broadband Plan for the Commission to distinguish among spectrum bands for mobile broadband. The Plan targets spectrum for mobile broadband at 3.7 GHz and below, without distinguishing among bands.[33] For the reasons discussed in the subsections that follow and in the attached Declaration of Jeffrey H. Reed and Nishith D. Tripathi,[34] there is no reason to break with precedent here.

Arguments that low-band spectrum holdings should be analyzed separate and apart from high-band holdings rest on the assumption that the costs of building out a network with high-band spectrum far exceed the costs of building out a network with low-band spectrum. That assumption is not necessarily true, and it is misleading in all events. While the superior propagation characteristics of low-band spectrum might reduce the costs of a network build-out

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[32] See, e.g., *In re Sprint-Nextel Corp. & Clearwire Corp. Applications for Consent to Transfer Control of Licenses, Leases, & Authorization*, Memorandum Opinion and Order, 23 FCC Rcd. 17,570, 17,597, ¶ 63 (2008) ("*Sprint/Clearwire Order*") ("[E]ver since the Commission first determined to evaluate potential spectrum aggregation of 800 MHz cellular spectrum, 800/900 MHz SMR, and 1.9 GHz broadband PCS spectrum for purposes of competitive review, it has not differentiated among bands based on specific propagation characteristics or purported distinctions in trading value. Nor did we do so last year when we recently expanded the initial spectrum aggregation screen to include 700 MHz band spectrum. We decline to do so here with respect to the particular BRS spectrum that we find, below, suitable for mobile telephony/ broadband services."); *AT&T/Centennial Order*, 24 FCC Rcd. at 13,938, ¶¶ 49-50 ("RCA opposes any one entity holding both cellular licenses in a given market and argues that AT&T should not control the spectrum with the most desirable propagation characteristics. In analyzing this transaction, we decline to apply any additional scrutiny beyond a case-by-case review of the facts of the particular markets where spectrum aggregation exceeds our spectrum screen or involves cellular overlaps."); *In re Applications of AT&T Inc. & Cellco P'ship d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses & Authorizations & Modify a Spectrum Leasing Arrangement*, Memorandum Opinion and Order, 25 FCC Rcd. 8704, 8725, ¶ 45 (2010) ("*AT&T/Verizon Order*") ("In evaluating this transaction, we decline to analyze whether, generally, the Applicants have an unfair advantage in terms of the quantity and quality of spectrum that they hold.").

[33] *See* National Broadband Plan at 75.

[34] *See* Declaration of Jeffrey H. Reed and Nishith D. Tripathi ("Reed and Tripathi").

if network coverage were the only consideration, it is not. Indeed, increasingly in today's spectrum-constrained world, capacity is equally, if not more, important. Thus, claims of dramatic costs differences in network build-out defy reality. Of course, such claims would prove little even if they were true because, to the extent low-band spectrum allows for some cost savings in network build-out, any such savings would be reflected in the higher price paid for such spectrum compared to high-band spectrum.[35] No petitioner has shown that the overall investment required to buy and deploy high-band spectrum is greater than for low-band spectrum, much less have they shown—or could show—that any such cost difference actually renders carriers using high-band spectrum competitively ineffective. Nor has any petitioner even attempted to show that there are any other advantages to low-band spectrum that are so great as to warrant a separate market analysis for such spectrum. The lack of any such analysis is all the more fatal to their cause given that a competitive harm test that is based on a carrier's low-band spectrum holdings without considering other bands is very likely to distort competition, result in an inefficient use of spectrum, and harm consumers.

In any event, Petitioners are simply rehashing here claims they have raised in a pending Commission proceeding addressing these issues.[36] These claims should be addressed in that

[35] *Fourteenth Report*, ¶ 268 ("The different propagation characteristics of these bands impact how they can be used to deliver mobile services to consumers. Bidders in recent auctions in the United States also appear to have recognized these differences, which helps explain the significantly different prices per MHz-POP in the AWS-1 and 700 MHz auctions.").

[36] *See Wireless Telecomms. Bureau Seeks Comment on Petition for Rulemaking of Rural Telecomms. Group, Inc. to Impose a Spectrum Aggregation Limit on All Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, Public Notice, 23 FCC Rcd. 14,875 (2008).

proceeding since they raise issues of industry-wide significance and are not specifically related to this transaction.[37]

A. Low-Band Spectrum Is Not Necessary to Compete Successfully in the Provision of Mobile Broadband Services.

Access to low-band spectrum is not a prerequisite to compete effectively in mobile broadband services. Competition in the wireless market is robust, and consumers reap the benefits of that competition every day.[38] Numerous carriers are operating successfully in the wireless market with no or very limited holdings of low-band spectrum. In fact, four of the seven largest providers have no or very limited spectrum below 1 GHz: Sprint, T-Mobile, MetroPCS, and Leap.[39] Sprint and T-Mobile have built nationwide networks, including in rural areas, using high-band spectrum.[40] MetroPCS and Leap Wireless, which the *Fourteenth Competition Report* described as the fastest growing providers in the United States,[41] are rapidly deploying advanced services using high-band spectrum; indeed, MetroPCS was the first U.S.

[37] *See Cingular/AT&T Wireless Order*, 19 FCC Rcd. at21,592, ¶ 183 ("By addressing these issues in the context of a rulemaking, [the Commission] will be able to develop a comprehensive approach based on a full record . . . ."). Also, imposing the condition only on AT&T will only harm AT&T's ability to provide advanced wireless services to its customers and compete with its competitors. Verizon Wireless, Cellular South, U.S. Cellular, and other low-band licensees would not be restricted. The Commission should not unlevel the competitive playing field in this manner.

[38] *See supra* at 5-8; Public Interest Statement at 30-38.

[39] *Fourteenth Competition Report* ¶ 267, Table 25.

[40] *See, e.g.*, Deutsche Telekom AG, Annual Report (Form 20-F), at 60 (Feb. 26, 2010) (T-Mobile USA deployed its 3G network using the AWS-1 licenses it purchased in 2006); Sprint Nextel 10-K at 5, 31 (showing that more than 80 percent of its subscribers are on the network supported by its high-frequency spectrum holdings).

[41] *Fourteenth Competition Report* ¶ 175.

carrier to introduce LTE for commercial use.[42] Also, a carrier without low-band spectrum is not deterred from entering the market or expanding its network.[43] Clearwire and LightSquared are investing billions of dollars to develop 4G nationwide networks based on 2.5 GHz spectrum and MSS/ATC (1.5/1.6 GHz) spectrum, respectively.[44] The success of these carriers in deploying nationwide networks and rolling out advanced wireless services using high-band spectrum portfolios belies Petitioners' ostensible concerns about aggregation of low-band spectrum and challenges the Commission's suggestion that a carrier must have a mix of low-band and high-band spectrum to provide efficient mobile wireless services.[45]

B. High-Band Advantages Can Offset Low-Band Advantages.

High-band spectrum has its own advantages, which can offset the advantages of low-band spectrum. In a wireless market where carriers are struggling to provide the spectrum capacity necessary to meet the surging consumer demand for mobile broadband devices and services, high-band carriers have touted the advantages of their spectrum holdings. For example, Barry West, former Chief Technology Officer of Nextel and then Sprint Nextel, stated: "The 2.5 gigahertz band spectrum Sprint Nextel's WiMAX network will use *compares favorably to 700*

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[42] MetroPCS 10-K at 6, 35; *see also* Public Interest Statement at 34-36.

[43] Just last week, DISH's bid for DBSD North America was approved by the U.S. Bankruptcy Court for the Southern District of New York. *DISH Wins DBSD*, MediaBiz.com, Mar. 16, 2011, *available at* http://skychat.mediabiz.com/news/articles/?edit_id=15556. The deal will enable DISH to acquire 20 MHz of MSS spectrum that it can use to offer mobile broadband services. *Id.*

[44] Public Interest Statement at 32-34. Clearwire's current financial difficulties reportedly stem from strategic differences with its majority owner Sprint, rather than from anything inherent its cost structure. *See Clearwire Sees End to Sprint Fight*, WirelessEurope's Daily Bulletin, Feb. 18, 2011 ("Clearwire has promised that it will soon boost revenue 'substantially' by ending a fight over the rates it charges to Sprint, its biggest customer and investor.").

[45] *Fourteenth Competition Report* ¶ 273 ("higher-frequency spectrum is made more valuable by being combined with lower-frequency spectrum, and vice versa.").

megahertz band spectrum. While the lower band enables coverage to be deployed more cheaply initially, *the upper band allows greater overall capacity to handle more subscribers*."[46] The FCC has noted the significant capacity advantage of spectrum above 1 GHz in the geographic area the spectrum covers.[47] This capacity advantage often stems from the fact that, at least in initial deployments, there typically are more high-band cell sites than low-band cell sites per square kilometer area, which permits more throughput potential over the high-band cell sites.[48]

Another advantage of high-band spectrum that has been recognized by the Commission is that there is more high-band spectrum available.[49] Further, large contiguous chunks of high-band spectrum are available, which the Commission has noted may "enable operators to deploy wider channels and simplify device design."[50] Such larger chunks of spectrum also may provide high-band carriers a deployment cost advantage. For example, as a result of initially deploying channels with larger bandwidths, a high-band carrier may not need to expand capacity to meet

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[46] Paul Kirby, *Sprint Nextel CTO Offers Vigorous Defense of WiMAX*, TR Daily, Apr. 22, 2008 (emphasis added).

[47] *Fourteenth Competition Report* ¶ 272 (noting that "higher-frequency spectrum may be particularly effective for providing significant capacity, or increasing capacity, within a smaller geographic area," and that "higher-frequency spectrum can be ideally suited for providing high capacity where it is needed, such as in high-traffic urban areas.").

[48] Reed and Tripathi at 21. For example, assume that a low-band carrier has 50 700 MHz band cell sites and a high-band carrier has 100 AWS cell sites in a given geographic area. Further assume that a cell site supports throughput of 50 Mbps in a 10 MHz channel bandwidth. If users in this area generate traffic of 5000 Mbps, each carrier would need 100 cell sites (5000 Mbps/50 Mbps per cell site) to meet the traffic demand. The high-band carrier already has 100 sites, so it would not need to add any new cell sites to meet the traffic demand. In contrast, the low-band carrier only has 50 sites in the same geographic area that can support throughput of only 2500 Mbps (50 Mbps x 50 cell sites). This translates into a significant cost advantage for the high-band carrier. To meet traffic demand, the low-band carrier would need to add 50 more cell sites, add additional carrier frequencies, or add a combination of cell sites and carriers. *Id.*

[49] *See Fourteenth Competition Report* ¶ 272.

[50] *Id.*

consumer demand as soon as a low-band carrier.[51] A low-band carrier with smaller channels may have to stitch together low- and high-band spectrum to meet its capacity needs. Creating such a patchwork quilt imposes greater transaction costs and requires more complicated devices and base station equipment (both of which have to be attuned to a greater variety of spectrum blocks).[52] Indeed, to the extent a carrier must use a mix of high- and low-band spectrum to meet capacity demands, the low-band spectrum may not bring *any* coverage advantage since the carrier's cell site deployment for cell size will be constrained by the propagation characteristics of the high-band frequency used.[53]

The FCC also has recognized that "capacity enhancement technologies such as MIMO may perform better at higher frequencies."[54] Such advantages result from the fact that high-band RF signal wavelengths are significantly shorter than low-band wavelengths.[55] Low-band wavelengths, for example, make it more challenging to achieve adequate antenna separation in a handheld device, thus reducing the potential benefits of MIMO compared to high-band devices.[56] Advanced antenna systems, such as pico cells which cover a building and femto cells which cover a home, also may perform better in high-band systems since the required antenna spacing is less for both the handset and the base station.[57] Similarly, high-band spectrum may work

[51] Reed and Tripathi at 15.

[52] *Id.* at 15, 21-22.

[53] *Id.* at 22.

[54] *Fourteenth Competition Report* ¶ 272.

[55] Reed and Tripathi at 34-35.

[56] *Id.* at 35.

[57] *Id.*

better with in-building antenna systems because building attenuation losses help prevent interference to the outdoor cellular network.[58]

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In short, all frequency bands have their own unique limitations and advantages, and there is no frequency band that is the best in all environments and circumstances. Further, as discussed below, carriers may well reach different conclusions regarding which band is better.

C. The Deployment Cost-Advantages of Low-Band Spectrum Are Overstated.

Petitioners exaggerate the deployment cost advantages of low-band spectrum for mobile broadband—especially in urban areas where capacity and throughput are more important than coverage in meeting the surging consumer demand for broadband data services.[59] Petitioners paint a simplistic picture of deployment costs that takes into account only the initial cost of deploying enough cell sites to simply provide coverage in a geographic area. However, the cost of deploying and using spectrum is much more complex and must take into account the cost of all inputs in deploying and using spectrum.

1. Deployment Costs

The increasing consumer appetite for multimedia devices, video-streaming applications, and interactive websites has caused an exponential increase in data traffic.[60] For example, as Chairman Genachowski recently noted, "[s]martphones use twenty-four times the amount of data of traditional cell phones; other wireless devices, like tablets, can use more than 122 times the

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[58] *Id.* at 18.

[59] Public Interest Statement at 28-29; Reed and Tripathi at 22-26; *see Fourteenth Competition Report* ¶ 272.

[60] Public Interest Statement at 8-18.

data. This explosion in demand for spectrum is putting strain on the limited supply available for mobile broadband, leading to a spectrum crunch."[61]

In the face of heavy traffic loads, a carrier's goal is not simply to provide coverage everywhere. Instead, the more pressing goal may be to ensure sufficient capacity is available to provide high-quality service to all users everywhere.[62] Both coverage *and* capacity must be considered in concert with one another in any effective wireless deployment in capacity-constrained areas.[63] Thus, network planners increasingly have focused on designing networks that are capacity-based, where cell size is determined not by propagation characteristics, but by the number of simultaneous data users that can be supported. Such capacity-driven network design increasingly is required in urban and suburban areas with high data traffic demand and will be required in those rural areas where there are capacity constraints.[64]

Thus, while a carrier with lower band spectrum might experience lower initial deployment costs, after the initial build-out, a high-band carrier's capital expenditures to address increasing capacity demands may be lower relative to a low-band carrier. The Commission has recognized this, stating that "higher-frequency spectrum can be ideally suited for providing high

[61] March 16, 2011 Chairman Genachowski Speech at 5.

[62] Reed and Tripathi at 22-26.

[63] *Id.* at 21-26.

[64] Public Interest Statement at 12-15; Reed and Tripathi at 3-4, 9, 21, 26. For example, mobile broadband deployment is likely to be capacity-driven in rural areas where a 3G or 4G cellular network is the only economically viable Internet access solution. *Id.* at 9 n.3. Similarly, along rural stretches of interstate highways, low-band carriers may be forced to deploy additional cell sites to meet capacity demands resulting from increasing data usage by passengers using handset devices or data-intensive devices installed in vehicles. *Id.* at 4.

capacity where it is needed, such as in high traffic urban areas."[65] The low-band carrier's larger cell sizes means that the carrier will have to make additional capital expenditures to expand capacity—by adding base stations or carrier frequencies—sooner relative to a high-band deployment.[66]

2. The Price of Spectrum Reflects Its Deployment Costs.

Since spectrum is distributed via auctions and secondary markets, as a matter of economic logic, one would expect the price paid for low- and high-band spectrum to reflect the attributes of the spectrum, including the costs of deploying and using such spectrum.[67] The Commission recognized this point in the *Fourteenth Competition Report*, stating: "The different propagation characteristics of these bands impact how they can be used to deliver mobile services to consumers. Bidders in recent auctions in the United States also appear to have recognized these differences, which helps explain the significantly different prices per MHz-POP in the AWS-1 and 700 auctions."[68]

Because the two inputs—deployment cost and spectrum price—are closely related, the cost of one input cannot be considered in isolation from the other. Purchasers of low-band spectrum may be willing to pay a modest premium upfront to obtain spectrum with lower initial deployment costs, whereas purchasers of high-band spectrum may be willing to pay a lower price for spectrum while absorbing higher initial deployment costs.

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[65] *Fourteenth Competition Report* ¶ 272 (Commission noting that "higher-frequency spectrum may be particularly effective for providing significant capacity, or increasing capacity, within a smaller geographic area," and that "higher-frequency spectrum can be ideally suited for providing high capacity where it is needed, such as in high traffic urban areas.").

[66] Reed and Tripathi at 28.

[67] *Id.* at 4.

[68] *Fourteenth Competition Report* ¶ 268.

D. Distinguishing Among Spectrum Bands for Purposes of Measuring Competitive Harm Will Lead to Inefficient Economic Outcomes.

A competitive harm test that results in a cap on holdings in particular bands of spectrum is likely to distort competition, lead to inefficient use of spectrum, and harm consumers. Such caps would reduce the flexibility carriers need to design their systems and force carriers constrained by the cap to choose inefficient mixes of spectrum inputs.[69] A carrier may decide, for example, that it is more efficient to obtain contiguous bands of spectrum, which efficiencies the Commission has recognized.[70] A policy that limits spectrum holdings in particular bands may prevent a carrier from obtaining spectrum contiguous to spectrum it already holds, thwarting the potential to achieve such efficiencies.[71] Further, the addition of different spectrum bands to a carrier's portfolio can raise a host of complex technical issues as compared to adding more spectrum in bands already in the provider's portfolio.[72] In short, regulations that arbitrarily limit access to certain bands of spectrum suitable for mobile broadband service likely will force carriers to make inefficient spectrum choices and limit their ability to expand capacity, which would result in higher prices and lower quality. Such results undermine competition and harm consumers.

The Commission should not impose a limit on a carrier's low-band spectrum holdings in the absence of any current market harms. There is no evidence of such harms in today's vigorously competitive wireless market. A limit on low-band spectrum holdings, on the other hand, threatens the very competition the FCC seeks to encourage. The only beneficiaries of such

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[69] Reed and Tripathi at 33-38

[70] *Fourteenth Competition Report* ¶ 272.

[71] Reed and Tripathi at 33-38.

[72] *Id.* at 4, 22 n.10, 28.

a policy would be high-band carriers whose low-band competitors would face artificial capacity constraints. Consumers, who would face higher prices and lower quality choices, would be harmed. The Commission must not adopt a spectrum policy that fails to achieve its goals, prevents the best and highest use of spectrum, distorts competition, and harms consumers.

V. Other Claims Are Meritless.

Petitioners raise a number of other meritless claims that should be dismissed.[73]

A. The Communications Act Prohibits the FCC from Denying This Transaction in Order to Repurpose the Qualcomm Spectrum for Unlicensed Devices.

Section 310(d) of the Communications Act unambiguously prohibits the Commission from considering "whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee."[74] Free Press's formalistic claim that this statute does not bar the Commission from considering the alternative of dedicating the Qualcomm Spectrum for unlicensed devices is meritless under the plain words of the statute. The statute prohibits the Commission from considering whether the Qualcomm Spectrum should be made available "to a

[73] In addition to the claims discussed below, also without merit is King Street Wireless's ("KSW") suggestion that AT&T's general description of its future plans for the Qualcomm Spectrum should be converted into a transaction commitment in a Commission order. *See* Petition to Condition Grant of Application of King Street Wireless at 3-4 (filed Mar. 11, 2011) ("KSW Petition"). Merger commitments are appropriate as conditions to an approval when they are necessary to eliminate or mitigate harms to the public interest, which is not the case here. As is appropriate, AT&T has set forth in the Public Interest Statement its current plans for the use of the Qualcomm Spectrum, in order to permit the Commission to assess whether the Application meets the public interest statement. AT&T is aware of and takes very seriously its obligation of candor to the Commission. There is no basis for imposing any commitments in this transaction.

[74] 47 U.S.C. § 310(d).

person other than the proposed transferee."[75] Dedicating spectrum for unlicensed use would do just that.[76]

Indeed, the Commission repeatedly has recognized that the ultimate purpose of the statute is to protect a proposed transferee or assignee from the very type of claim advanced here. For example, the Commission has noted that "Section 310(d) of the Act limits our consideration to the buyer proposed in an assignment application, and we cannot consider whether some other proposal might comparatively better serve the public interest."[77] The Commission also affirmed an order by the Common Carrier and Mass Media Bureaus where the bureaus noted that the "fundamental purpose" of the statute is to "avoid 'an unwise invasion by a governmental agency

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[75] *Id.*

[76] Moreover, the Commission's revocation of Qualcomm's licenses, or modification of such licenses, to permit unlicensed third party use, would significantly reduce the value of those licenses. Qualcomm paid millions of dollars for the exclusive right to use this spectrum as it was allocated by the Commission, and it has a protectable interest in the spectrum during its period of exclusive use. A retroactive reduction in value of the licenses by permitting third party use—or total destruction of the value of those licenses by revocation—would be an unlawful breach of contract or unconstitutional taking of property. *See, e.g., U.S. AirWaves, Inc. v. FCC,* 232 F.3d 227, 233 (D.C. Cir. 2000) (reviewing court must review such rules to see whether they are reasonable "both in substance *and* in being made retroactive"); *Winstar v. United States,* 518 U.S. 839 (1996) (government may be liable for breach of contract caused by change in law by Congress); *Centex Corp. v. United States,* 395 F.3d 1283, 1309 (Fed. Cir. 2005) (finding "the government…liable in damages for breach of the contract when Congress enacts specifically targeted legislation that appropriates for the government a portion of the benefits previously available to the contractor"); *In re Atlantic Bus. & Cmty. Dev. Corp.,* 994 F.2d 1069, 1074 (3rd Cir. 1993) (noting that "[t]he Communications Act itself seems to imply the existence of a limited property right in an FCC license once it is granted," and stating that Section 301 "implies the creation of rights akin to those created by a property interest limited only by the 'terms, conditions and periods of the license'"). *Cf. United States v. Gen. Motors Corp.,* 323 U.S. 373, 374-75, 378 (1945) (reasoning that the Takings Clause "is addressed to every sort of interest the citizen may possess").

[77] *See, e.g., In re Application of Citadel Commc'ns Co., Ltd. (Assignor) & Act III Broad. of Buffalo, Inc. (Assignee) for Assignment of License of Television Station WUTV(TV), Buffalo, New York,* Memorandum Opinion and Order, 5 FCC Rcd. 3842, 3844, ¶ 16 (1990).

into private business practice…and undue delay in passing upon transfers of licenses.'"[78] Thus, the Commission is prohibited from considering whether Free Press's proposal for unlicensed use of the spectrum, or any other proposal, might better serve the public interest than AT&T's plan.

Also, Free Press's concern—the availability of unlicensed spectrum—is being addressed elsewhere. As Free Press itself notes, "the National Broadband Plan specifically recommended the creation of a new, contiguous nationwide band of spectrum for unlicensed use."[79] Moreover, there are various open proceedings in which the Commission is considering unlicensed operations,[80] and there may be further proceedings to advance the National Broadband Plan's goal.[81] For example, in the second quarter of 2010, the Office of Engineering and Technology and the Wireless Telecommunications Bureau "beg[an] meetings with stakeholders to collect initial ideas regarding candidate bands to make more spectrum available for unlicensed use."[82]

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[78] *See In re Applications of MMM Holdings, Inc. for Transfer of Control of LIN Broadcasting Corp.*, Memorandum Opinion and Order, 4 FCC Rcd. 6838, 6839, ¶ 8 (CCB MMB 1989), *aff'd In re Applications of MMM Holdings, Inc. for Transfer of Control of LIN Broad. Corp.*, 4 FCC Rcd. 8243, 8244, ¶¶ 8-9 (1989).

[79] Free Press Petition at 14 (citing National Broadband Plan, Recommendation 5.11 at 94-95).

[80] *See, e.g.*, *In re Promoting More Efficient Use of Spectrum Through Dynamic Spectrum Use Techs.*, ET Dkt No. 10-237; *In re Innovation in the Broad. Television Bands: Allocations, Channel Sharing & Improvements to VHF*, ET Dkt No. 10-235; *In re Unlicensed Operation in the TV Broad. Bands*, ET Dkt No. 04-186; *In re Additional Spectrum for Unlicensed Devices Below 900 MHz & in the 3 GHz Band*, ET Dkt No. 02-380;

[81] National Broadband Plan, Broadband Action Agenda, http://www.broadband.gov/plan/broadband-action-agenda.html#oet-cusp (last visited Mar. 17, 2011).

[82] *Id.* In addition, NTIA's Unlicensed Subcommittee of the Commerce Spectrum Management Advisory Committee is considering ways to achieve the National Broadband Plan's recommendation to free up a new, contiguous nationwide band for unlicensed use and recently made recommendations for more efficient unlicensed uses. *See* Unlicensed Uses Subcommittee Report, Commerce Spectrum Management Advisory Committee (Jan. 11, 2011), *available at* http://ntia.doc.gov/advisory/spectrum/reports/UNLICENSED_USES_REPORT_01112011.pdf; Unlicensed Subcommittee of the Commerce Spectrum Management Advisory Committee,

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These industry-wide proceedings are more appropriate venues for Free Press to seek to address its concerns regarding spectrum for unlicensed uses. The Commission's longstanding policy is "not [to] consider arguments in [transaction] proceeding[s] that are better addressed in other Commission proceedings,"[83] and there is no reason to break with that precedent here.

B. No Divestiture of the Lower 700 MHz E Block Spectrum Is Required.

The Commission should reject DISH's request that AT&T be required to divest the Lower 700 MHz E block spectrum it will acquire in five BEAs.[84] As noted above, AT&T would not be above the Commission's current spectrum screen—or even a screen that includes the WCS spectrum—in any county in these areas. The Commission repeatedly has rejected divestiture of spectrum based on criteria that deviate from its case-by-case competitive review of markets that exceed its screens.[85]

Footnote continued from previous page

Workplan for Unlicensed Spectrum Committee, *available at* http://www.ntia.doc.gov/advisory/spectrum/meeting_files/07272010/UnlicensedWorkplan_Draft.doc.

[83] *Applications of Craig O. McCaw & Am. Tel. & Tel. Co. for Consent to the Transfer of Control of McCaw Cellular Commc'ns, Inc. & its Subsidiaries*, Memorandum Opinion and Order, 9 FCC Rcd. 5836, 5904, ¶ 123 (1994) ("*McCaw/AT&T Order*").

[84] DISH Petition at 8-9.

[85] *See, e.g., AT&T/Centennial Order*, 24 FCC Rcd. at 17,471, ¶ 50 (rejecting a prophylactic rule requiring divestiture where the merged entity would hold both cellular licenses); *AT&T/Dobson Order*, 22 FCC Rcd. at 20,338, ¶ 94 (Commission declining to impose a 70 MHz cap on CMRS holdings after an upcoming auction, regardless of whether the spectrum screen was triggered); *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,476-77, 17,480, ¶¶ 61, 70 (Commission declined to "apply any heightened scrutiny to spectrum aggregation involving cellular overlaps" where "several commenters contend that the Commission should apply heightened scrutiny to any markets in which the merged entity will monopolize the cellular spectrum in a market.").

DISH, which owns the Lower E block in all other BEAs but has yet to provide service over the spectrum, states that it has an "interest[ ] in competing in these [five markets] too."[86] However, the Communications Act prohibits the Commission from considering "whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee."[87]

Further, DISH had the opportunity to obtain this spectrum in Auction 73 and failed to do so. During Auction 73, DISH was outbid for the five Lower E block licenses at issue here by Qualcomm.[88] DISH was not willing to pay the market price for the Lower E block licenses in the auction. There is no basis for the Commission to give DISH another bite at the apple.

C. This Transaction Will Not Give AT&T the Incentive to "Warehouse" the Qualcomm Spectrum.

The Commission should dismiss RTG's and RCA's frivolous claim that AT&T is planning to warehouse the Qualcomm Spectrum in order to foreclose its competitors from using it.[89] To the contrary, AT&T has every incentive to incorporate the Qualcomm Spectrum into its national LTE network using supplemental downlink technology as quickly as possible to help meet the soaring consumer demand for wireless broadband services.[90]

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[86] DISH Petition at 1 n.1.

[87] 47 U.S.C. § 310(d).

[88] FCC Auctions, Auction 73, Results, Full Information Results Files, http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=73 (last visited Mar. 18, 2011). *See also* Heather Forsgren Weaver & Howard Buskirk, *Dish Unit Wins 700 MHz Licenses*, Satellite Wk., Mar. 24, 2008 ("A Dish Network Corp. subsidiary won almost all the 6 MHz E-block in the 700 MHz auction. The unit, Frontier Wireless, won 168 licenses in the 6 MHz E-block for $711 million. Qualcomm won the other five E-block licenses.").

[89] RCA Petition at 6; RTG Petition at 24.

[90] *See* Public Interest Statement at 8-16.

Indeed, Chairman Genachowski just last week dismissed suggestions that carriers are warehousing spectrum, stating "[t]hat's just not true" in response to claims "that some licensees, such as cable and wireless companies, are just sitting on top of, or 'hoarding,' unused spectrum that could readily solve [the spectrum crunch.]"[91] The Chairman noted that the "looming spectrum shortage is real—and it is the alleged hoarding that is illusory."[92]

As AT&T made clear in the Public Interest Statement, AT&T will deploy the Qualcomm Spectrum promptly after the technical standards and equipment are in place to permit its deployment. AT&T's deployment will require the adoption of new standards and the development, testing, and deployment of new network and customer equipment. Based on currently available information, AT&T expects that it will be able to deploy handsets incorporating this new technology by as early as 2014.[93] This deployment schedule would be the same for any other carrier seeking to bond the Qualcomm Spectrum with paired spectrum using the new supplemental downlink technology, and, thus, there is no basis whatsoever to suggest that AT&T is attempting to warehouse the spectrum to prevent other carriers from using it.

Moreover, RCA's contention that AT&T already is warehousing AWS and 700 MHz spectrum it currently owns is plainly wrong.[94] As AT&T made abundantly clear in the Public Interest Statement, AT&T is utilizing those spectrum bands in the LTE network it is rolling out this year and expects to be largely completed by 2013.[95]

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[91] March 16, 2011 Chairman Genachowski Speech at 8.

[92] *Id.*

[93] Public Interest Statement at 16.

[94] RCA Petition at 7.

[95] Public Interest Statement at 13.

D. The Commission Should Decline to Consider Claims That Are Not Transaction-Specific.

Several Petitioners allege harms that have nothing to do with this transaction.[96] These Petitioners ignore the Commission's longstanding policy of "not consider[ing] arguments in [merger] proceeding[s] that are better addressed in other Commission proceedings"[97] and of not "impos[ing] conditions to remedy pre-existing harms or harms that are unrelated to the transaction."[98] Instead, Petitioners have raised issues that "apply broadly across the industry" and are not "issue[s] specific to this transaction,"[99] such as the rules and policy decisions related to data roaming,[100] priority access and data roaming for public safety entities,[101] 700 MHz

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[96] Several of these Petitioners fail to demonstrate standing to be a party in this proceeding. *See* 47 U.S.C. § 309(d) (requiring a petitioner to be a "party in interest"); 47 C.F.R. § 1.939(a); *see, e.g.*, *ALLTEL/Western Wireless Order*, 20 FCC Rcd. at 13,091, ¶ 104 & n.264 (questioning the standing of RTG and another party to raise roaming concerns). RTG, RCA, and Free Press attempt to articulate competitive or other harms to its members resulting from this transaction despite failing to identify the affected members, much less substantiating their claims of harm. The remaining petitioners also fail to substantiate their claims of harm.

[97] *McCaw/AT&T Order*, 9 FCC Rcd. at 5904, ¶ 123; *see also AT&T/Centennial Order*, 24 FCC Rcd. at 13969, ¶ 133 (stating that general concerns regarding roaming would be more appropriately addressed in the relevant proceeding); *AT&T/Verizon Order*, 25 FCC Rcd. at 8748, ¶ 101 (same).

[98] *See, e.g.*, *AT&T/Verizon Order*, 25 FCC Rcd. at 8718, ¶ 25; *AT&T/Centennial Order*, 24 FCC Rcd. at 13,929, ¶ 30; *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,463, ¶ 29; *Sprint/Clearwire Order*, 23 FCC Rcd. at 17,582, ¶ 22; *AT&T/BellSouth Order*, 22 FCC Rcd. at 5674-75, ¶ 22; *SBC/AT&T Order*, 20 FCC Rcd. at 18,303, ¶ 19; *Sprint/Nextel Order*, 20 FCC Rcd. at 13,979, ¶ 23; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,545-46, ¶ 43.

[99] *See, e.g.*, *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,535-36, ¶ 207 (finding it inappropriate to consider general revisions to RF standards in a transaction proceeding); *AT&T/Centennial Order*, 24 FCC Rcd. at 13,972, ¶ 141 (denying a condition prohibiting handset exclusivity because the purported harm applied "broadly across the industry" and was not transaction specific); *AT&T/Verizon Order*, 25 FCC Rcd. at 8749, ¶ 104 (same).

[100] RCA Petition at 9-10; RTG Petition at 14-19; Free Press Petition at 18-19; Cellular South Petition at 14-19. *See In re Reexamination of Roaming Obligations of Commercial Mobile Radio Serv. Providers & Other Providers of Mobile Data Servs.*, WT Dkt No. 05-265, 25 FCC Rcd. 4181, 4182, ¶ 1 (2010).

interoperability,[102] handset exclusivity,[103] open Internet access,[104] special access,[105] and universal service fund support,[106] that are the subject of pending proceedings.[107] AT&T and Qualcomm already have responded in the pending proceedings to the claims that Petitioners are rehashing here,[108] and even RTG and Cellular South have noted the abundance of comments that are

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[101] RTG Petition at 21-23. There are various open proceedings in which the Commission is considering issues affecting public safety priority access and data roaming. *See, e.g.*, *In re Increasing Public Safety Interoperability by Promoting Competition for Public Safety Commc'ns Techs.*, PS Dkt No. 10-168*; In re Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Dkt No. 06-229*; In re Reexamination of Roaming Obligations of Commercial Mobile Radio Serv. Providers & Other Providers of Mobile Data Servs.*, WT Dkt No. 05-265.

[102] RCA Petition at 8; Free Press Petition at 20-21; Cellular South Petition at 14-19. *See In re 700 MHz Band Mobile Equipment Design and Procurement Practices Petition for Rulemaking*, RM No. 11592.

[103] Free Press Petition at 20-21; Cellular South Petition at 14-19. *See In re Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Mfrs.*, RM-11497 (filed May 20, 2008).

[104] Free Press Petition at 16-17. *See Preserving the Open Internet*, GN Dkt No. 09-191; *Broadband Indus. Practices*, WC Dkt No. 07-52, Report and Order, FCC 10-201, 52 Communications Reg. (P&F) 1 (Dec. 23, 2010).

[105] Free Press Petition at 21. *See In re Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 1994 (2005).

[106] Free Press Petition at 22-23. *See In re High-Cost Universal Service Support*, Order and Notice of Proposed Rulemaking, 25 FCC Rcd. 12,854 (2010).

[107] As noted above in footnote 35, Petitioners' claims regarding the competitive harms arising from low-band spectrum holdings also are the subject of a pending proceeding.

[108] *See, e.g.*, *In re 700 MHz Band Mobile Equipment Design & Procurement Practices*, RM No. 11592, Comments of AT&T Inc. (filed Mar. 31, 2010); *In re 700 MHz Band Mobile Equipment Design & Procurement Practices*, RM No. 11592, Comments of Qualcomm Inc. (filed Mar. 31, 2010); *In re Preserving the Open Internet*, GN Dkt No. 09-191, Comments of AT&T Inc. (filed Oct. 12, 2010); *In re Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Dkt No. 06-229, Comments of AT&T Inc. at 6-11 (filed July 19, 2010); *In re Special Access Rates for Price Cap Local Exchange Carriers*, WC Dkt No. 05-25, Comments of AT&T Inc. (filed Jan. 19, 2010); *In re High-Cost Universal Serv. Support*, WC Dkt No. 05-337, Comments of AT&T Inc. (filed July 12, 2010); *In re Reexamination of Roaming*

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already pending in several of these proceedings.[109] In those proceedings, AT&T has explained why it believes that the regulatory changes with which Petitioners seek to hobble AT&T in this transaction are both unnecessary and harmful to consumers.[110]

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Obligations of Commercial Mobile Radio Serv. Providers, WT Dkt No. 05-265, Reply Comments of AT&T Inc. (filed Nov. 28, 2007); *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Serv. Providers*, WT Dkt No. 05-265, Opposition to Petition for Reconsideration of AT&T Inc. (filed Nov. 6, 2007); *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Serv. Providers*, WT Dkt No. 05-265, Comments of AT&T Inc. (filed Oct. 29, 2007); *In re Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers & Handset Mfrs*., RM No. 11497, Reply Comments of AT&T Inc. at 9-16 (filed Feb. 20, 2009); *In re Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers & Handset Mfrs*., RM No. 11497, Comments of AT&T Inc. at 15-16 (filed Feb. 2, 2009).

[109] RTG Petition at 16, 19 (noting the "plethora of information submitted in the data roaming docket," and claiming that the need for a handset exclusivity agreement prohibition is "well documented in the public record"); Cellular South Petition at iii (noting the "101 sets of comments . . . filed in the data roaming, handset exclusivity, and 700 MHz interoperability proceedings").

[110] Cellular South admits that "[t]his is not the first time that Cellular South has petitioned the Commission [for] conditions to remedy exclusive handset arrangements and the lack of an automatic data roaming mandate," and that each of the last four times the Commission denied the conditions because they did not remedy a transaction-specific harm. Cellular South Petition at 6. This lack of success has not deterred Cellular South, and it is now trying for the fifth time to obtain that relief—despite the fact that the Commission has not changed its standards since it denied the request for such relief previously, as recently as twice in 2010 and once in 2009. The four cases Cellular South relies on this time—all of which predate its last three denials of conditions—do not produce a different result. In each of the four cases, the FCC imposed a condition on a transferee's ETC support. However, in three of the four cases, the conditions were actually voluntary commitments and, thus, distinguishable from the relief Cellular South seeks here. *AT&T/Dobson Order*, 22 FCC Rcd. at 20,329, ¶ 71; *Sprint/Clearwire Order*, 23 FCC Rcd. at 17,612, ¶ 107; *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,532, ¶ 197. In the fourth case, the Commission stated that the condition capping the carrier's USF support was based on the Federal-State Joint Board on Universal Service's recommendation as a result of an emergency funding shortage. *See In re Applications of Alltel Corp. & Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Leases & Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd. 19,517, 19,520, ¶ 8 (2007) ("the Joint Board recommended that the Commission impose an interim, *emergency* cap on the amount of high-cost support.") (emphasis added). A self-proclaimed emergency by a self-interested carrier, on the other hand, is not a

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Petitioners also seek to impose on AT&T alone (but not the industry generally) a range of other sweeping regulatory requirements governing early termination fees ("ETFs"),[111] accelerated 700 MHz performance standards,[112] and the harmonization of the technical and

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reasonable basis for the Commission to depart from its clear policy of not imposing conditions addressing pre-existing, non-transaction-specific conditions in an assignment proceeding.

[111] Free Press Petition at 21-22. The Commission has recognized that ETFs are of industry-wide concern, and the issue is the subject of a Commission investigation *See, e.g.*, Press Release, FCC, FCC Survey Confirms Consumers Experience Mobile Bill Shock and Confusion About Early Termination Fees (May 26, 2010) (discussing nationwide survey and investigation concerning early termination fees for mobile wireless service), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298415A1.pdf; FCC, Early Termination Fees: What is the FCC doing about ETFs?, http://www.fcc.gov/cgb/etf/ (last visited Mar. 17, 2011) (noting that in December 2009 and January 2010, the Commission's Consumer Task Force issued letters to numerous mobile telephone service providers, including AT&T, Sprint Nextel, T-Mobile, Verizon, and Google , asking them for information about their services and fees, including ETFs).

[112] RTG Petition at 23-25. RTG seeks to impose such conditions not only on the Qualcomm Spectrum, but on *all* 700 MHz spectrum held by AT&T prior to this transaction. RTG's attempt to use this application proceeding as a way to impose sweeping new performance standards is misplaced. The Commission already imposes stringent performance requirements on various 700 MHz block to address the very warehousing concern RTG alleges. *See, e.g., In re Section 257 Triennial Report to Congress Identifying & Eliminating Market Entry Barriers For Entrepreneurs & Other Small Businesses,* Report, FCC 11-33, 2011 WL 742255 *18, ¶ 44 (rel. March 1, 2011) (noting that the Commission imposed stringent performance requirements in order to promote the provision of innovative services to consumers throughout the license areas, including in rural areas," and that the "performance requirements are intended to discourage larger entities from purchasing spectrum for the purpose of warehousing it."). A retroactive revision of performance standards also would call into question the extent to which AT&T, and other bidders, can rely on the integrity of the Commission's auction process and would substantially reduce the value of the licenses obtained at auction. Such a retroactive reduction in value of the licenses would be unlawful. *See, e.g., U.S. AirWaves,* 232 F.3d at 233 (reviewing court must review such rules to see whether they are reasonable "both in substance *and* in being made retroactive"); *Windstar v. United States,* 518 U.S. 839 (1996) (government may be liable for breach of contract caused by change in law by Congress); *Centex Corp. v. United States,* 395 F.3d 1283, 1309 (Fed. Cir. 2005) (finding "the government…liable for breach of contract when Congress enacts specifically targeted legislation that appropriates for the government a portion of the benefits previously available to the contractor"); *In re Atl. Bus. & Cmty. Dev. Corp.,* 994 F.2d 1069, 1074 (3rd Cir. 1993) (noting that "[t]he Communications Act itself seems to imply

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operating parameters of 700 MHz spectrum.[113] None of the alleged harms Petitioners seek to address are specific to this transaction, and the Commission has repeatedly made clear it "will not impose conditions to remedy *pre-existing* harms or harms that are unrelated to the transaction."[114] Moreover, the Commission has recognized that adopting conditions that are not transaction-specific, "could distort competitive market conditions, resulting in favoring some providers over others unjustly and unreasonably."[115]

In sum, the Petitioners seek such far-ranging conditions addressing issues of industry-wide concern in the context of a transaction that involves no wireless subscribers and has undisputed public interest benefits. Imposing any of these proposed regulatory changes on

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the existence of a limited property right in an FCC license once it is granted, and stating that Section 301 implies the creation of rights akin to those created by a property interest limited only by the 'terms, conditions and periods of the license.'").

[113] RCA Petition at 12; KSW Petition at 4; Petition for Conditional Grant of United States Cellular Corp. at 3-5 (filed Mar. 11, 2011) ("USCC Petition"). KSW and USCC propose new power and height limits on AT&T's use of the Lower E and D blocks, but not on DISH, which will continue to hold most of the Lower E block in the country. RCA proposes that the Commission "harmonize the technical specifications and operating parameters of the assigned spectrum to be consistent with those in the Lower A and B blocks," but provides no guidance of the extent of the harmonization it seeks. The Commission previously has considered these issues of industry-wide concern in a rulemaking proceeding, and such a proceeding, rather than a transaction-specific proceeding, would be the appropriate forum to air these concerns. *See, e.g., In re Serv. Rules for the 698-746, 747-762 & 777-792 MHz Bands*, Notice of Proposed Rule Making, 21 FCC Rcd. 9345, 9385-88, ¶¶ 90-95 (2006) (seeking comment on modifications to power limits for operations in the Upper and Lower 700 MHz bands).

[114] *See, e.g., Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,529, ¶ 188 ("PISC's suggestion that we extend these [C block open access] conditions to all of Verizon Wireless's spectrum holdings is not merger-specific and could undermine our goal of not unduly burdening existing services and markets."); *id.* at 17,534, ¶ 207 (proposed condition regarding radiofrequency requirements could not be adopted because "[p]ossible revision of the RF standards, which apply broadly across the industry, is not an issue specific to this transaction").

[115] *AT&T/Verizon Order*, 25 FCC Rcd. at 8747, ¶ 99.

AT&T alone under the guise of a unilateral transaction condition, but not on the industry as a whole, would harm the public interest by constraining AT&T's ability to compete, discouraging it from investing, and disadvantaging customers. The secondary market for spectrum cannot work if the Commission imposes such conditions on assignment applications. The Commission should summarily dismiss these claims in this proceeding and consider them, if at all, in industry-wide proceedings where it "will be able to develop a comprehensive approach based on a full record."[116]

VI. Conclusion

For the foregoing reasons, the Commission should dismiss or deny the filings made in opposition to the Application and expeditiously grant it without conditions.

[116] *SBC/AT&T Order*, 20 FCC Rcd. at 18,320, ¶ 55; *see also AT&T/BellSouth Order*, 22 FCC Rcd. at 5696, ¶ 60; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,592, ¶ 183; *AT&T/Centennial Order*, 24 FCC Rcd. at 13,972, ¶ 141; *AT&T/Verizon Order*, 25 FCC Rcd. at 8749, ¶ 104. To the extent the Commission decides, despite clear precedent to the contrary, to consider these issues in this proceeding, the Commission should quickly dismiss these issues as meritless. AT&T's comments in the relevant proceedings, which AT&T hereby requests to incorporate in this proceeding by reference, clearly demonstrate why the requested changes are contrary to the public interest.

Respectfully submitted,

AT&T Inc.

By: /s/ William R. Drexel
William R. Drexel
John J. O'Connor
James Meza III
AT&T Inc.
208 South Akard Street
Room 3504
Dallas, TX 75202
Telephone: (214) 757-3350

Gary L. Phillips
Michael P. Goggin
AT&T Inc.
1120 Twentieth Street, NW
Suite 1000
Washington, D.C. 20036
Telephone: (202) 457-3055

Of Counsel:

Arnold & Porter LLP
555 Twelfth Street, NW
Washington, D.C. 20004
Telephone: (202) 942-6060

QUALCOMM Incorporated

By: /s/ Dean Brenner
Dean R. Brenner
QUALCOMM Incorporated
1730 Pennsylvania Avenue, NW
Suite 850
Washington, D.C. 20006
Telephone: (202) 263-0020

Wiltshire & Grannis LLP
1200 Eighteenth Street, NW
Suite 1200
Washington, D.C. 20036
Telephone: (202) 730-1352

CERTIFICATE OF SERVICE

I hereby certify that on this twenty-first day of March, 2011, I caused true and correct copies of the foregoing Joint Opposition of AT&T and Qualcomm to Petitions to Deny or to Condition Consent and Reply to Comments to be served by electronic mail or first-class mail, postage prepaid, upon:

Best Copy and Printing, Inc.
445 Twelfth Street, SW
Room CY-B402
Washington, D.C. 20554
FCC@BCPIWEB.COM

Kathy Harris
Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554
kathy.harris@fcc.gov

Kate Matraves
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
445 Twelfth Street, SW
Room 6530
Washington, D.C. 20554
catherine.matraves@fcc.gov

Jim Bird
Office of General Counsel
Federal Communications Commission
445 Twelfth Street, SW
Room 8-C818
Washington, D.C. 20554
jim.bird@fcc.gov

Russell D. Lukas
David L. Nace
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Suite 1200
McLean, VA 22102

Jeffrey H. Blum, Senior Vice President & Deputy General Counsel
Alison A. Minea, Corporate Counsel
DISH Network L.L.C.
1110 Vermont Avenue, NW, Suite 750
Washington, D.C. 20005

M. Chris Riley
Aparna Sridhar
Free Press
501 Third Street, NW, Suite 875
Washington, D.C. 20001

Parul P. Desai
Consumers Union
1101 Seventeenth Street, NW, Suite 500
Washington, D.C. 20036

Matthew F. Wood
Andrew Jay Schwartzman
Media Access Project
1625 K Street, NW, Suite 1000
Washington, D.C. 20006

Michael Calabrese
Sascha Meinrath
Open Technology Initiative
New America Foundation
1899 L Street, NW, Suite 400
Washington, D.C. 20036

Harold Feld
Public Knowledge
1818 N Street, NW, Suite 410
Washington, D.C. 20036

Thomas Gutierrez
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Suite 1200
McLean, VA 22102

Matthew A. Brill
James H. Barker
Alexander Maltas
Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004

Rebecca Murphy Thompson
General Counsel
Rural Cellular Association
805 Fifteenth Street, NW, Suite 401
Washington, D.C. 20005

Caressa D. Bennet
Daryl A. Zakov
Bennet & Bennet, PLLC
4350 East West Highway, Suite 201
Bethesda, MD 20814

Thomas J. Sugrue
Senior Vice President, Government Affairs
T-Mobile USA, Inc.
401 Ninth Street, NW, Suite 550
Washington, D.C. 20004

Grant B. Spellmeyer
Senior Director
Regulatory and Legislative Affairs
United States Cellular Corporation
8410 West Bryn Mawr
Chicago, IL 60631

George Y. Wheeler
Holland & Knight LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, D.C. 20006

/s/ Lauren E. Manning

Lauren E. Manning